



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 10, 2017

[REDACTED]

Ms. Angela Sanders
Village Clerk
Village of Royal Lakes
549 West Shipman Road
Royal Lakes, Illinois 62685

RE: OMA Request for Review – 2016 PAC 40768

Dear [REDACTED] and Ms. Sanders:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons that follow, the Public Access Bureau concludes that there is insufficient evidence to find that the Village of Royal Lakes Board of Trustees (Board) violated OMA.

On March 16, 2016, [REDACTED] (collectively, the "requesters") submitted this Request for Review to the Public Access Bureau. [REDACTED] is the former Village clerk and [REDACTED] are Village trustees. The requesters alleged that the Board took final action on items at a special meeting when those items were not on an agenda posted at least 48 hours in advance of the meeting, which occurred at 6 p.m. on March 11, 2016. The requesters furnished two agendas that purportedly listed the items for the March 11, 2016, meeting: one contained a single item entitled "Paying of Bills," and the other contained ten items, including three relating to the appointments of new Village officials. The requesters alleged that the agenda containing the single item had been posted and distributed to the trustees, but the Board convened and took final action on the items on the ten-item agenda. The requesters also alleged that Mr. London Simmons, who was sworn in as a trustee in May 2015, had not completed OMA training as required by section 1.05 of OMA (5 ILCS 120/1.05 (West 2014)).

Ms. Angela Sanders
February 10, 2017
Page 2

On March 23, 2016, this office sent the Board a copy of the Request for Review and asked it to provide a detailed written response to the allegations in the Request for Review together with copies of any agendas, minutes, and any existing verbatim recordings for the March 11, 2016, meeting.

On March 30, 2016, the Board submitted a written response to the Request for Review. It provided a photograph that was time-stamped as taken on March 9, 2016 at 4:43 p.m., and claimed that the photograph depicted Mr. Simmons posting the agenda for the March 11, 2016, special meeting. It also provided an additional photograph, which was not time-stamped, and claimed that photograph depicted the agenda that was posted on March 9, 2016. This agenda was the ten-item agenda with the new appointments.

On April 6, 2016, this office forwarded a copy of the Board's response to the requesters. On April 11, 2016, the requesters delivered a written reply to the Board's response, and asserted that the photographs did not demonstrate that the full ten-item agenda was the one posted at the village hall in advance of the meeting. The requesters also noted that the Board had not addressed the issue of Mr. Simmons's OMA training.

On April 12, 2016, an Assistant Attorney General in the Public Access Bureau had a telephone conversation with Mr. Simmons in which he stated that he had completed OMA training when he became a trustee in 2015, and had provided the certificate of completion to [REDACTED] who was the Village clerk at the time. He stated that now the Village staff could not locate the certificate.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2014).

Posting of Agenda

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides that "[p]ublic notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting[.]" In addition, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

The Board asserts that the full ten-item agenda was posted at 4:43 p.m. on March 9, 2016, which is more than 48 hours in advance of the special meeting held at 6 p.m. on March 11, 2016. The requesters dispute the Board's proof of the required posting, and assert that it has not demonstrated which version of the agenda was posted at that time because there is not a full depiction of the full ten-item agenda being posted that is time-stamped. They further assert that the version of the agenda received by the trustees was the single-item agenda, not the full agenda. Because there is conflicting evidence regarding the posting of the agenda, there is insufficient evidence from which this office could conclude the Village violated section 2.02 of OMA by failing to post the meeting agenda with the full slate of items for final action. However, we caution the Village to ensure that any future agendas are posted at 48 hours in advance, and that these agendas contain the general subject matter of all resolutions or ordinances on which the Village anticipates taking final action.

OMA Training

Section 1.05(b) of OMA (5 ILCS 120/1.05(b) (West 2014)) provides the requirements for members of public bodies to complete the electronic training program developed by the Public Access Counselor:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

- (1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or
- (2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

* * *

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

Neither the Board nor Mr. Simmons himself has furnished a copy of the certificate of completion reflecting that Mr. Simmons successfully completed the OMA electronic training when he took the oath of office as a trustee in 2015. However, according to training records maintained by the Public Access Counselor, Mr. Simmons successfully completed OMA training when he was the Village Mayor on November 16, 2012; those records do not reflect that he successfully completed training when he was sworn in as a trustee in 2015.¹ Under section 1.05(b) of OMA, an elected or appointed member of a public body who has previously completed the training is not required to subsequently complete the training. Accordingly, this office cannot conclude that the Board or Mr. Simmons failed to comply with the training requirements of OMA; moreover, under section 1.05(b), any violation of the training requirements would not invalidate any action taken by the Board. However, given updates in the training since 2012 and Mr. Simmons's gap in service on the Board, this office strongly recommends that he complete the current version of the training.

The parties raise numerous additional issues related to the governance of the Village of Royal Lakes. The Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2014)) and OMA. 15 ILCS 205/7(c) (West 2014). Therefore, these allegations are not subject to review by this office.

¹Mr. Simmons previously served as Village Mayor until 2013. See Simmons Appointed after Royal Lakes Mayor Resigns, *Macoupin County Enquirer-Democrat*, available at <http://enquirerdemocrat.com/simmons-appointed-royal-lakes-mayor-resigns/>.

[REDACTED]
Ms. Angela Sanders

February 10, 2017

Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have questions, you may contact me at (217) 782-9078 or nolson@atg.state.il.us. Thank you.

Very truly yours,

[REDACTED]
NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

40768 o 105 training complete 202 notice proper mun